

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 971 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHAKTIVIJAY INDUSTRIES LTD.

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioners
MR SP DAVE, APP, for Respondent No. 1
MR AD SHAH for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/06/1999

ORAL JUDGEMENT

1. Heard Mr. Jayant Patel for the petitioner, Mr. S.P. Dave, learned Additional Public Prosecutor for respondent No.1 and Mr. A.D. Shah for respondent No.2.

2. Rule. Mr. Dave waives service of Rule on behalf of respondent No.1 and Mr. Shah waives service on behalf of respondent No.2. In the facts and circumstances of

the case and with the consent of the parties, the matter is taken up today for hearing.

3. Mr. Patel's main contention is that the complaint before the learned Chief Judicial Magistrate, Baroda, bearing No. 1375 of 1998, wrongly implicates petitioner No.3, namely, Mayank Bharatbhai Patel as he is neither a director nor an office bearer of petitioner No.1-Shri Shaktivijay Industries Ltd. An attempt is made on the part of the complainant to pressurise the petitioner. The complaint, therefore, requires to be quashed against him.

4. On merits, Mr. Patel submitted that the complaint is outcome of a civil dispute. An order was placed with the complainant for erection of a plant which was to be carried out in two phases and advance cheques were given by the petitioner-company for erection of the second phase of the plant. The complainant failed to perform his part of the contract and, therefore, that came to be cancelled by the petitioner by letter dated 16th March, 1998, which was sent by hand delivery. The said letter was followed by another letter dated 19th March, 1998, which was sent by UPC. This indicates that there is a civil dispute between the parties and the complaint is lodged only with a view to bring pressure on the petitioners.

5. Mr. A.D. Shah, learned advocate appearing for respondent No.2 states that respondent No.2 is strongly contesting the receipt of the letters dated 16th March, 1998 and 19th March, 1998, which are claimed to have been sent by hand delivery and Under Postal Certificate, respectively. He submitted that on dishonour of the cheques, the complainant had served the petitioners with a notice as required under the Negotiable Instruments Act, to which no reply is given. He, however, concedes to the fact that petitioner No.3-original accused No.3, Mayank Bharatbhai Patel is neither a director nor an office bearer of petitioner No.1-company.

6. The contentions raised in the petition are such that they cannot be accepted at this stage on face value and they need to be proved. Under the circumstances, the petition cannot be entertained in respect of petitioners No.1 and 2. So far as petitioner No.3 is concerned, it is apparent that he has been wrongly implicated on a presumption that he may have some nexus with the company and, therefore, qua petitioner No.3, the petition deserves to be allowed.

7. Mr. Patel, during the course of argument, submitted that petitioner No.2, who is the Managing Director of the company and is based in Ahmedabad, will be required to appear before the Magisterial Court at Baroda very often. He is required to go out quite often for attending business meetings, etc. Keeping the peculiar facts of the case, in my view, it would meet the ends of justice, if the learned trial Magistrate is directed not to insist for attendance of petitioner No.2 on all occasions at the trial. Petitioner No.2 shall appear before the learned Magistrate on the next date and, thereafter, the learned Magistrate shall not insist for his attendance at the trial on all dates. However, it would be open for the learned Magistrate to insist for attendance as and when required, for example, for recording plea or recording statement or pronouncement of judgment, etc., or for any other cause found fit by the learned Magistrate.

8. With the above directions, the petition is partly allowed. Rule is made absolute qua petitioner No.3. So far as petitioners No.1 and 2 are concerned, Rule is discharged.

[A.L. DAVE, J.]

gt